Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1998

JAN MARIE REINHARDT, et al. --PETITIONERS

VS.

PEGGY MISTICH REINHARDT, et al. --RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

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54 pp

The question presented is whether Louisiana Civil Code Article 136, which affords extended family visitation under extraordinary circumstances and when in the best interest of the child, is an unconstitutional infringement of the fundamental right of parents to make parental decisions.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

JAN MARIE REINHARDT, petitioner

CHAD REINHARDT, petitioner

CHELSEA REINHARDT, petitioner

CHASE REINHARDT, petitioner

PEGGY MISTICH REINHARDT, respondent

TYRELL WILEY REINHARDT, respondent

JAN GUIDRY REINHARDT, respondent

THE STATE OF LOUISIANA, ATTORNEY GENERAL RICHARD IEYOUB, respondent

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Louisiana Supreme Court appears at Appendix A to the petition and is published at 1998 WL 960224 (La.)

The opinion of the Louisiana First Circuit Court of Appeals appears at Appendix B to the petition and is published at 720 So.2d 78.

JURISDICTION

The date on which the Louisiana Supreme Court decided this case was December 18, 1998. A copy of that decision appears at Appendix A.

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment,
United States Constitution;

Ninth Amendment,
United States Constitution;

Fourth Amendment,
United States Constitution;

Louisiana Civil Code Article 136 (B);

Louisiana Constitution of 1974,
Article 1 Section 5.

STATEMENT OF THE CASE

Before this Honorable Court is the issue of the constitutionality of Louisiana Civil Code Article 136 (B). Petitioner, Jan Marie Manno, through undersigned counsel respectfully represents that:

1) **The right to parent is a fundamental right and any infringement upon that right is subject to strict scrutiny;**

2) **Louisiana Civil Code Article 136 (B) violates the United States Constitution;**

3) **Louisiana Civil Code Article 136 (B) violates Article 1 Section 5 of the Louisiana Constitution.**

4) **Conflict exists in state jurisdictions as to the constitutionality of extended family visitation statutes that do not require a showing of harm to the child.**

On May 15, 1997, the Honorable John L. Weimer of the 17th Judicial District Court, Parish of Lafourche, State of Louisiana, denied Petitioner's motion pleading the unconstitutionality of LA Civil Code Article 136 (B), and on September 25th, 1997, the Louisiana First Circuit Court of Appeals in a two to one (2-1) decision affirmed the Trial Court's ruling. On December 18, 1998 the Louisiana Supreme Court affirmed the decision of the First Circuit Court of Appeal. The rulings of these Louisiana courts are contrary to both the United States Constitution and the Louisiana

Constitution. As an infringement of a constitutionally guaranteed fundamental right, the right to make parental decisions, Louisiana Civil Code Article 136 (B) is subject to strict scrutiny. As such, the State must demonstrate a compelling state interest and show that the statute is narrowly tailored to meet such an interest. Petitioner avers that Civil Code Article 136 (B) fails this test as there is no requirement that "substantial harm" to the child be shown before grandparent and extended family visitation is allowed.

Louisiana Civil Code Article 136 (B) is completely void of the requirement of showing "substantial harm," and as written violates the fundamental right to make parental decisions without unjustified government interference. Such decisions include child rearing, education, family relationships and associations. This statute must be stricken down and declared unconstitutional by this Honorable Court.

REASONS FOR GRANTING THE PETITION

The Honorable Justices of the Supreme Court must grant this writ application in order to review and ultimately determine the constitutionality of Louisiana Civil Code Article 136 (B), which purpose serves to correct material injustices and significantly affects the public interest by upholding the fundamental rights of a parent to raise their child without the interference of the state prior to a showing of "substantial harm" to the child's welfare.

At this time there is division in the lower courts as to the constitutionality of grandparent visitation statutes. The Supreme Courts of Florida, Tennessee, Georgia, Oklahoma and Washington have held statutes of similar construction to Louisiana's Civil Code Article 136 (B) unconstitutional absent a requirement of substantial harm to the child. The ruling of the Louisiana Supreme Court stands in direct conflict to the rulings of other jurisdictions.

FACTUAL BACKGROUND

On October 25, 1986, Jan Marie Manno was married to Darwin James Reinhardt (hereinafter referred to as "Reinhardt"). During the marriage the parties had three children, namely Chad, Chase and Chelsea. The children are still minors at present. Prior to the marriage, during the marriage and after the marriage, Reinhardt was physically, mentally and emotionally abusive to Petitioner and her children. After almost 10 years of abuse, Petitioner filed for divorce and sought custody of her three minor children.

Under the terms of the Judgment of Divorce, Petitioner was granted the sole custody of the three children, with Reinhardt restricted to supervised visitation. The restrictions placed on Reinhardt were based on his abusive behavior, including prior attempts to kill Petitioner and then himself. On March 16, 1995, even after protective and restraining orders had been obtained against him, Reinhardt attacked Petitioner in front of her three children. Reinhardt beat, punched and kicked Petitioner. Reinhardt was charged and plead guilty to simple battery and later sentenced to six (6) months incarceration.

On Monday, April 24, 1995, Reinhardt, in violation of his restraining order and armed with a handgun, broke into the residence of Petitioner, at which time he attempted to rape, kidnap and kill Petitioner.

Reinhardt plead guilty to aggravated burglary charges on February 15, 1996, and was later sentenced to 25 years in prison. Reinhardt is presently awaiting trial on attempted second degree murder charges.

During these criminal proceedings Reinhardt's mother, Peggy Mistich Reinhardt and his brother, Tyrell Wiley Reinhardt filed on December 13, 1996, a petition for visitation pursuant to LA Civil Code Article 136(B). Noteworthy was the fact that two (2) years prior to the physical separation of Petitioner and Reinhardt, Reinhardt had cut-off all relationships between his side of the family, specifically his mother and his brother, Tyrell Reinhardt.

Petitioner attempted to mitigate the issue of visitation by tentatively agreeing to a limited, restricted, supervised visitation schedule between the Reinhardts and her three minor

children. During these limited supervised visitations, the Reinhardts continued to support their son's brutal actions and went so far as to blame Petitioner and disparage her in front of her children. These vicious unsupported character attacks escalated into statements by the Reinhardts, in front of the three children, describing their mother as a "whore" and condoning their son's actions.

On June 6, 1996, Petitioner on the advise and recommendation of the children's therapist, Dr. Marsha Redden, filed a motion for termination of visitation between her three children and the Reinhardts.

The Trial Court prior to making a ruling on future visitation ordered all parties to be evaluated by a mental health expert. After extensive and expensive evaluation by the court appointed expert, Dr. Steven York, Dr. York recommended further restrictions regarding the visitation of The Reinhardts and the three children.

His recommendation **excluded** Tyrell Reinhardt from visitation based on the children's accurate perception of Tyrell Reinhardt's violent nature. Further he restricted Peggy Reinhardt and Jan Guidry Reinhardt to visitation only once a month for up to one or one and one-half hours under the supervision of a mental health care provider. In addition, The Reinhardts were allowed only one weekly recorded telephone contact with the children.

After only three supervised visits between the children and The Reinhardts, Dr. York made a drastic, unsubstantial recommendation regarding unsupervised visitation. Dr. York further indicated that he had conferred with the children's

therapist, Dr. Lynn Parker, who he represented was in agreement with his decision. Upon verification of Dr. Parker's opinion concerning unsupervised visitation, Dr. Parker stated that she did not agree to unsupervised visitation.

Dr. York, after conferring with Dr. Parker, then indicated that his recommendations were only recommendations of a best case scenario and that he would defer to Dr. Parker's opinion regarding future visitation.

Presently based on the parties being unable to agree on the form of visitation the Trial Court has ordered that the visitations continue under the supervision of Dr. York until the children and The Reinhardts are to have unsupervised visitation. Further, the Trial Court has ordered that Petitioner be responsible for the costs associated with these visitations.

Petitioner, after making a noble effort to resolve this matter and fearing for the welfare and well being and safety of her children, filed a motion pleading the unconstitutionality of LA Civil Code Article 136 (B) and a motion to terminate visitation based on the unconstitutionality of LA Civil Code Article 136 (B).

After a hearing on those issues, the Trial Court denied both motions. The First Circuit Court of Appeals affirmed the Trial Court's ruling. The Louisiana Supreme Court, with assigning reasons, denied Petitioner's writ application on December 18, 1998. Petitioner now comes before the Honorable Justices of the United States Supreme Court and respectfully prays that the Louisiana statute be declared unconstitutional based on the law of the U.S. Constitution and the Constitution of Louisiana. Petitioner respectfully requests

this Honorable Court reverse the decisions of the Louisiana courts and find that LA Civil Code Article 136(b) is unconstitutional, null and void.

ARGUMENT

1) **The Louisiana First Circuit Court of Appeals erred in holding Louisiana Civil Code Article 136 (B) constitutional because it constitutes an impermissible interference with fundamental parental protected by the United States and Louisiana Constitutions.**

This Honorable Court has a longstanding tradition recognizing and protecting parents' rights in the care, custody and management of their children without undue governmental interference. This protection is rooted firmly in the Fourteenth Amendment of the United States Constitution. "The liberty guaranteed by the Fourteenth Amendment to the Federal Constitution denotes . . . the right of the individual . . .to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men". Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

In fact, this Honorable Court has characterized the right to make parental decisions as a fundamental right under the United States Constitution. The "freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment." Santosky v. Kramer, 455 U.S. 745, 753 (1982); Meyer v. Nebraska, supra; see Roberts v. United States Jaycees, 468 U.S. 609, 618-20 (1984)

(parents' right to child rearing deserves "a substantial measure of sanctuary from unjustified interference by the State"); Stanley v. Illinois, 405 U.S. 645, 651-52 (1972) (parents' right to conceive and raise their children has been deemed essential); Ginsberg v. New York, 390 U.S. 629, 639 (1968) ("The parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society."); Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (the custody, care and nurture of the child reside first in the parents); Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925) (parents have liberty interests to direct the upbringing and education of their children).

Louisiana Civil Code Article 136 (B), violates these rights, which are protected under the U.S. Constitution. The Louisiana grandparent visitation statute infringes upon the parents' liberty rights to make decisions about the rearing of their children and likewise intrudes upon the parents' privacy in making such decisions.

The effect of Article 136 (B) is to interfere with parental rights regarding the custody, care and management of their children. There must be a powerful countervailing interest to permit such interference. Santosky, supra, at 607. Indeed, this Honorable Court has interpreted this to mean that there must be first a showing of substantial harm to the child. Id.; Stanley, supra; see , e.g., Wisconsin v. Yodel, 406 U.S. 205, 230 (1972) (the children of Amish parents were not harmed when they received an Amish education as opposed to a public education); Pierce, supra, at 403 (parents' decision that child be proficient in foreign language was determined not to be injurious to health, morals and understanding of child).

The standard utilized by Louisiana in determining whether grandparents are entitled to visitation is the "best interest of the child" standard. Louisiana Civil Code Article 136 (B) reads in pertinent parts as follows:

> **Under extraordinary circumstances, a relative, by blood or affinity, or a former stepparent or stepgrandparent, not granted custody of the child may be granted reasonable visitation rights if the court finds that it is in the best interest of the child.**

The "best interest of the child" standard has been rejected by this Honorable Court as the controlling factor in regard to decisions effecting the child. The best interest of the child ". . . is not traditionally the sole criterion--much less the sole constitutional criterion--for other, less narrowly channeled judgments involving children, where their interest conflict in varying degrees with the interests of others". Reno v. Flores, 507 U.S. 292, 303, 113 S.Ct. 1439, 1447 (1993). This Court further elaborated that the "best interests of the child is not the legal standard that governs parents' or guardians exercise of their custody. . ." Id. Further this Court wisely acknowledged, "the best interests of the child is likewise not an absolute and exclusive constitutional criterion for the government's exercise of the custodial responsibilities that it undertakes , which must be reconciled with many other responsibilities." Id.

Clearly, the "best interest of the child" standard has been deemed deficient by this Honorable Court in matters relating to a child's welfare. As Civil Code Article 136 (B) stands, the "best interest of the child" standard is the sole criterion utilized in determining whether grandparent visitation is proper.

2) **The right to make parental decisions is a fundamental right of privacy and is subject to strict scrutiny under the United States Constitution.**

This Honorable Court has established that in cases where the infringement of a fundamental right is concerned, the state must satisfy a heavy burden. "Where certain 'fundamental rights' are involved, the Court has held that regulation limiting these rights may be justified only by a 'compelling state interest'" Roe v. Wade, 410 U.S. 113, 154, 93 S.Ct. 705, 727 (1973) citing Kramer v. Union Free School District, 395 U.S. 621, 627, 89 S.Ct. 1886, 1890, 23 L.Ed.2d 583 (1969); Shapiro v. Thompson, 394 U.S. 618, 634, 89 S.Ct. 1322, 1331, 22 L.Ed.2d 600 (1969); Sherbert v. Verner, 374 U.S. 398, 406, 83 S.Ct. 1790, 1795, 10 L.Ed 2d 965 (1963).

In addition to the requirement of a compelling state interest, any "legislative enactments must be narrowly drawn to express only the legitimate state interests at stake". Id. citing Griswold v. Connecticut, 381 U.S., at 485, 85 S.Ct., at 1682; Aptheker v. Secretary of State, 378 U.S. 500, 508, 84 S.Ct. 1659, 1664, 12 L.Ed.2d 992 (1964); Cantwell v. Connecticut, 310 U.S. 296, 307-308, 60 S.Ct. 900, 904-905, 84 L.Ed. 1213 (1940); see Eisenstadt v. Baird, 405 U.S., at 460, 463-464, 92 S.Ct. at 1042, 1043-1044 (White, J., concurring in result).

Although the definition of a compelling state interests is nebulous at best, examples of state intrusions into the family that have been considered compelling are readily accessible. Acting under the doctrine of state police power, the state may require vaccinations of children against communicable diseases as part of its interest in protecting citizens from injuries. See Prince v. Massachusetts, supra. The state has a compelling interest in stepping in and preventing harm to a child such as in

Prince where state legislation prohibiting the use of minors to sell merchandise on the street was at issue. Id. The police power of the state can be best summed up as the power to intrude on the family in the interest of society as a whole and in situations where the child is placed in peril.

The State also may rely on its parens patriae power. This power allows the state to act from the viewpoint and in the interests of the child. In the same vein as the police power, the exercise of the parens patriae power is conditioned on a the prerequisite finding of harm or potential harm to the child. In Wisconsin v. Yoder, supra, this Honorable Court was faced with the state of Wisconsin's argument that its parens patriae power allowed it to require compulsory education of children beyond the eighth grade. This court rejected that argument based on the finding that the case presented in Yoder was "not one in which any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated or may be properly inferred." Id. at 230.

As in the above examples, Louisiana must demonstrate the requisite showing of harm to the child before it may exercise its power to intrude on the parenting right of Petitioner. This requirement is completely excluded from the text of
Civil Code Article 136 (B) and thus, 136 (B) fails to demonstrate a compelling state interest.

3) **Louisiana Civil Code Article 136 (B) violates Article 1, Section 5 of the Louisiana Constitution**.

Louisiana Civil Code Article 136 stands in direct violation of Louisiana's Constitution. The Louisiana Constitution of 1974 affords Louisiana citizens privacy rights

beyond the scope of the United States Constitution. Article 1, Section 5 of the 1974 Louisiana Constitution expressly guarantees that every individual shall be secure in his person against unreasonable searches, seizures, or invasions of privacy.

The concept of privacy is deeply rooted in Louisiana's heritage and is founded upon historical notions and federal constitutional expressions of ordered liberty. Justice Brandeis, sometimes called the father of the idea of privacy, recognized this fundamental right of privacy when he wrote:

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect... They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men.

Olmstead v. United States, 277 U.S. 438, 478, 48 S.Ct. 564, 572, 72 L.Ed. 944 (1928) (Brandeis, J., dissenting).

Historically, Louisiana Courts have acknowledged and affirmed parents' protected rights in the care, custody and management of their children and that parental rights are fundamental liberty interests warranting great deference and protection under the law. State in the Interest of D.D., 650 So.2d 447. (La.App.3 Cir. 1996); 650 So.2d 447, 449, citing Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). Louisiana courts have expressly stated that parents

enjoy the paramount right of custody of their children and may be deprived of that right only for compelling reasons which must be expressly determined and supported by convincing evidence. *See* In Re Custody of Landry, 662 So.2d 169 (La.App.1 Cir.1995); Lingo v. Kelsay,; 651 So.2d 499 (La.App.3 Cir.1995); In Interest of CLS,; 649 So.2d 532 (La.App.3 Cir.1994).

In addressing the issue of custody disputes between parents and non-parents, Louisiana courts have ruled, when possible, the child should remain in the natural parent's custody to maintain family unity and help the child identify as part of the natural family unit. *See* State In Interest of Sylvester, 525 So.2d 604 (La.App.3.Cir.1988). Additionally, the non-parent bears the strict burden of proving by convincing evidence that the parent's custody would result in substantial harm to the child. *See* Creed v. Creed,; 647 So.2d 1362 (La.App.3 Cir.1994). The non-parent's burden of proof goes beyond just a mere affirmative finding that the best interests of the child would be served by placing custody of the child with the non-parent; rather, the non-parent has to prove that the grant of custody to the parent would be detrimental to the child. *See* Love v. Love, 536 So.2d 1278 (La.App.3 Cir.1988).

The First Circuit Court of Appeals Judge Guidry in his dissenting opinion on this matter, clearly and simply summarizes the rule of law controlling in this case. Judge Guidry first states, "Absent a requirement to show resulting 'substantial harm,' the state's interest here may be legitimate in fostering extended family relationships, but it is not compelling and clearly does not outweigh the parents' constitutionally protected right to autonomy in child rearing decisions." Reinhardt v. Reinhardt, 720 So.2d 78 (La.App. 1 Cir.1998). Further, Judge Guidry intelligently recognizes that the

provisions of Louisiana Civil Code Article 136 (B) are an unconstitutional infringement and place an undue burden on the constitutionally protected right of parents to decide whether their child will be enlightened, guided or taught by extended family members or whether it will in fact harm their child. Id. That decision must be left to the parent absent a showing of substantial harm to the child.

Prior to the adoption of the 1974 Louisiana Constitution, this Honorable Court recognized that one aspect of the "liberty" protected by the Due Process Clause of the Fourteenth Amendment is "a right of personal privacy, or a guarantee of certain areas or zones of privacy." Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973). While the outer limits of this aspect of privacy had not been marked by this Court, it was clearly recognized that freedom of personal choice in matters of family life was a fundamental liberty interest protected by the Fourteenth Amendment. Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944); Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).

Article I, Section 5 of the 1974 Louisiana Constitution expressly guarantees that every individual shall be secure in his "person" against "unreasonable searches, seizures, or invasions of privacy." Since 1974, Louisiana courts have interpreted this right to privacy declared in Article I, Sec. 5 to incorporate protection for several different categories of privacy interests. See Devlin, Privacy and Abortion Rights Under the Louisiana State Constitution: Could Roe v. Wade be Alive and Well in the Bayou State?, 51 La.L.Rev. 685 (1991). This affirmative right to privacy incorporates the principles of the decisions of

this Court in explicit statement and includes the right of an individual to make, without unjustified government interference, personal decisions relating to marriage, procreation, contraception, family relationships, child rearing and education. State v. Perry, 610 So.2d 746 (La. 1992); Hondroulis v. Schuhmacher, 553 So.2d 398 (La. 1989).

In addition, it has been well recognized by Louisiana courts that the Declaration of Rights of the Louisiana Constitution provides more specific and broader protection of individual liberties than does the Bill of Rights or other provisions of the Federal Constitution. LSA - Constitution Article I, Section 1. Louisiana courts have held the following, specifically: (1) Louisiana's constitutional freedom of expression and right to privacy provisions affords a stronger protection for anonymity than the United States Constitution. State v. Moses, App. 4 Cir. 1995, 94-0489 (La. App. 4 Cir. 5/16/95), 655 So.2d 779; (2) Provisions of the Louisiana Constitution protecting citizens against "invasion of privacy" afford a higher standard of individual liberty than the Fourth Amendment of the United States Constitution. State v. Matthews, 654 So.2d 868 (La.App.4Cir.1995); (3) The Louisiana Constitution affords a higher standard of individual liberty than the Fourth Amendment of United States Constitution, as Louisiana Constitution also protects against "invasion of privacy." State v. Thomas, 638 So.2d 440 (La.App.5 Cir.1994), writ denied, 663 So.2d 718 (La.1995); (4) The Louisiana State Constitution's declaration of right to privacy is not duplicative of or merely coextensive with Fourth Amendment; the State Constitution contains higher standard of individual liberty than that afforded by Federal Constitution. Banks v. Department of Public Safety and Corrections, 598 So.2d 515 (App. 1 Cir. 1992); (5) The Right of Privacy under Louisiana Constitution is broader than the freedom against

unreasonable search and seizure under Fourth Amendment. Holthus v. Louisiana State Racing Com'n, 580 So.2d 469 (App.4 Cir.1991), writ denied, 584 So.2d 1162; (6) Privacy rights granted by Louisiana Constitution afford higher standard of individual liberty than those granted by Federal Constitution. State v. Vanderlinder,,575 So.2d 521(App. 5 Cir. 1991), writ denied, 580 So.2d 377; (7) The declaration of privacy embodied in this section embodies a higher standard of individual liberty than that afforded by jurisprudence interpreting the Fourth Amendment of the Federal Constitution (U. S. C. A. Const. Amend. 4). State v. Hernandez, 410 So.2d 1381 (1982).

Louisiana courts consider a parent's interest in a meaningful relationship with her children is "manifestly a liberty interest protected by the Fourteenth Amendment", In Re Adoption of B.G.S., 556 So.2d 545 (La.1990). This Court has declared that a biological parent's right to "the companionship, care, custody and management" of her children is a liberty interest far more important than any property right. Santosky v. Kramer, 455 U.S. 745, 458-59, 102 S.Ct. 1388, 1397, 71 L.Ed.2d 599 (1982); Lassiter v. Dept. of Social Services, 452 U.S. 18, 27; 101 S.Ct. 2153, 2160, 68 L.Ed.2d 640 (1981).

The integrity of the family and the right of a parent to raise her children has been recognized by Louisiana courts as a fundamental right or liberty protected by the Fourteenth Amendment, In the Interest of Howard, 382 So.2d 194.

The interest of parents in the custody and control of their children is an interest or right subject to constitutional protection. Under the Louisiana Constitution, the standard of "strict judicial scrutiny" is applied to review state action which imposes a burden on decisions as fundamental as those included within the right of personal privacy.

As stated by Justice Tate in his concurring opinion in State ex rel. Paul v. Peniston, 235 La. 579, 105 So.2d 228 (1958):

> The right of a parent to his child existed before governments or other social institutions of mankind. This natural right proceeds from our Creator and exists independently of the state; the state (and particularly by a democratic government where rights not delegated thereto by the people are reserved to the people, U.S. Constitution, Amendment X, Art. 1, Section 15, La. Constitution of 1921, LSA) does not in my humble opinion possess the power to take away in favor of a stranger the God-given right of a parent to his child, in the absence of the parent's forfeiture or abandonment of such right or of positive detriment to the child. Cf., State ex rel. Martin v. Garza, 217 La. 532, 46 So.2d 760; State ex rel. Martin v. Talbot, 161 La. 192, 108 So. 411.

In Woods v. Bard, 290 So.2d 675 (La. 1991), the court stated,"When a parent competes with a non-parent of a child, the parent's right is superior."

Accordingly, it is axiomatic that since the parent's authority to raise their children is a basic, fundamental right, it cannot be usurped or impinged by the government except when doing so serves a compelling state interest and accomplishes its goals with the least intrusive means. See Moore v. City of East Cleveland, 431 U.S. 494 (1977); Roe v. Wade, 410 U.S. 113, 155 (1973).

In recognizing the importance of parental rights, the courts have clearly established that a compelling state interest is one which involves the prevention of harm to the child. Clark v. Kleidon, 682 So.2d 887. Therefore, there must be a demonstration of harm to the child before the state can interfere into the fundamental right of privacy of the parent. In other words, there must also be an actual threat to the child's physical, emotional or mental well-being prior to the state intruding into the parent's fundamental right. Absent such a demonstration of substantial harm, as in the instant case, the parent's constitutional authority would be usurped in violation of Article I Section 5 of the Louisiana Constitution. Without a substantial danger of harm to the children, a court may not constitutionally impose its own subjective notions of the best interest of the children. Hawk v. Hawk, 855 S.W. 2d 573 (Tenn. 1993).

The Louisiana Civil Code Article 136 is unconstitutional because it fails to require a demonstration of harm to the children prior to unduly intruding upon the parent's constitutional rights to make parental decisions. In addition to the fact that there must be a compelling state interest, the challenged statute must also be the least intrusive means of furthering that state interest. Even if one were to argue that there was a compelling state interest being served by granting grandparent visitation over the objection of the parents, the resulting effect of promoting litigation between family members, bringing the intra-family problems to court and possibly subjecting minor children to judicial inquiry is not the "least intrusive" means of furthering the state interest. A judicial comparison of competitors for custody of a child does violence to the rule of "parental rights." See Blow v. Lottman, 75 S.D. 127,131 59 N.W. 2d 825 (1953).

In light of the consistent recognition that Louisiana courts have given to parental rights, it is proper for parents to expect privacy regarding whom their children can and cannot visit, regardless of familial relation.

4). Several state jurisdictions have rejected grandparent visitation as an unconstitutional infringement of parental rights.

Louisiana's grandparent visitation statute, Civil Code Article 136, stands in direct conflict to the recent holdings of other jurisdictions where the constitutionality of grandparent visitation statutes was challenged. Several state jurisdictions have, because of their inherent unconstitutionality, correctly stricken down grandparent visitation statutes. These statutes, written in a very similar manner to Civil Code Article 136, were found unconstitutional based on the lack of a requirement of a finding of substantial harm to the child prior to allowing visitation.

The Supreme Courts of Florida, Georgia, Washington, Oklahoma and Tennessee have correctly addressed this issue. In Brooks v. Parkerson, 454 S.E.2d 769, 770 (Ga. 1995), the child's maternal grandmother petitioned for visitation under Georgia statute OCGA §19-7-3. The petition was opposed by the child's parents who subsequently filed a motion to dismiss on the grounds that the statute was facially unconstitutional. OCGA §19-7-3 allowed the court to "grant any grandparent of the child reasonable visitation rights upon proof of special circumstances which make such visitation rights necessary to the best interest of the child." Id. at 771. The court properly held that the grandparent visitation statute failed to require a showing of harm to the child prior to ordering visitation, and thus was declared unconstitutional. In reaching its ruling, the court recognized well-established law that parents have an

interest to raise their children without unreasonable state interference protected by the United States Constitution. Id.

Relying on prior decisions of this Court, the Georgia court correctly acknowledged that "state interference with a parent's right to raise children is justifiable only where the state acts in its police power to protect the child's health or welfare, and where parental decisions in the area would result in harm to the child." Id. at 772. It reasoned that even if a special bond exists between the child and grandparent which would benefit the child, the impact of a lawsuit to enforce maintenance of that bond over the parents' objection could only have a deleterious effect on the child. Id. at 773.

Justice J. Sears in his concurring opinion stated:

> The family requires the most delicate mixture of nature and convention, of human and divine, to subsist and thrive. . . However, as important as grandparents can be in the lives of their grandchildren, the relationship between parent and child is paramount. For this reason I cannot believe in either the constitutionality or the political correctness of any law that allows a court, using its own notions of what "special circumstances" are, to pierce the delicate, complex and sacred unity of parent and child against the wishes of fit parents and without a showing of absolute necessity. . . absent abuse and neglect, parents and their children have the right to "remain together without coercive interference of awesome power of the state." Duchesne v. Sugarman, 566 F.2d 817, 825 (2nd Cir. 1977). . .Between parent and child, there is no monster like separateness. It can grow

> even faster than children, shutting first the heart, then the home, then history. The rights that some grandparents may seek under the liberal rules of the statute invalidated today could separate fit parents from responsibility for and authority over their children, thereby undermining the privacy and primacy of the American family. The statute cannot be allowed to stand.

265 GA 189, 195, 196, 454 S.E. 2d 769, 774, 775.

The recent ruling of the Washington Supreme Court in the matter of In Re Custody of Sara Skyanne Smith, 969 P.2d 21 (Wa.1998), is particularly illustrative of a correct decision striking down an unconstitutional visitation statute that does not fulfill the requirements of strict scrutiny. Scrutinizing the "best interest of the child" standard of RCW 26.10.160(3) , the court held:

> Short of preventing harm to the child, the standard of 'best interest of the child' is insufficient to serve as a compelling state interest overruling a parent's fundamental rights. State intervention to better a child's quality of life through third party visitation is not justified where the child's circumstances are otherwise satisfactory. To suggest otherwise would be the logical equivalent to asserting that the state has the authority to break up stable families and redistribute its infant population to provide each child with the best family." It is not within the province of the state to make significant decisions

> concerning the custody of children merely because it could make a "better" decision.

Id. at 31. The court went further and stated, "parents have a right to limit visitation of their children with third persons. The law's concept of the family rests 'on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment . . .'" Id. [citation omitted].

In Von Eiff v. Azicri, 720 So.2d 510 (1998), the Florida Supreme Court held that because the Florida statute allowing grandparent visitation did not require a showing of demonstrable harm to the child, it would not survive the compelling state interest test. According to the court, "neither the legislature nor the courts may properly intervene in parental decision-making absent significant harm to the child threatened by or resulting from these decisions". Id., at 514.

Further, in Hawk v. Hawk, 855 S.W. 2d 573 (Tenn. 1993), the Tennessee Supreme Court held that Tennessee Grandparents' Visitation Act violated the State Constitutional Right to privacy in making parental decisions. The Tennessee Supreme Court in Hawk reasoned:

> By holding that an initial showing of harm to a child is necessary before the State may intervene to determine the "best interests of the child," we approve the reasoning of both Tennessee and federal cases that have balanced various state interests against parental privacy rights. Implicit in Tennessee case and statutory law has always been the insistence that a child's welfare must be threatened before the State may intervene in parental decision-making.

> The requirement of harm is the sole protection that parents have against pervasive state interference in the parenting process.
>
> We, too, agree that neither the legislature nor a court may properly intervene in parenting decisions absent significant harm to the child from those decisions. . . An approach requiring a court to make an initial finding of harm to the child before evaluating the "best interests of the child" works equally well in this case to prevent judicial second-guessing of parental decisions . . .

Id. at 580-81.

The Hawk court properly rejected the argument that the grandparent-grandchild relationships always benefit children, because it "overlooks the necessity of a threshold finding of harm before the state can intervene in the parent-child relationship." Id. at 581.

The Hawk court concluded its decision by stating:

> We hold that Article I, Section 8 of the Tennessee Constitution protects the privacy interest of these parents in their child-rearing decisions, so long as their decisions do not substantially endanger the welfare of their children. Absent some harm to the child, we find that the state lacks a sufficiently compelling justification for interfering with this fundamental right.

The Oklahoma Supreme Court, ruling in Herbst v. Sayer, 971 P.2d 395 (1998), struck down Oklahoma's grandparent visitation statute, 10 O.S. Supp. 1996 § 5 (A)(1), due to its lack of a requirement of substantial harm to the child. The court reasoned:

> . . . a vague generalization about the positive influence of many grandparents have upon their grandchildren falls far short of the necessary showing of harm which would warrant the state's interference with this parental decision regarding who may see a child. . .If operating over the objection of fit parents, grandparent visitation may be imposed only upon a showing that the child would suffer harm without it.

Id. at 398. In addressing the conflict between the fundamental rights of parents to raise their children and the statute mandated grandparent visitation, the court found " . . .in favor of the preservation of the parents' constitutional rights." Id. The Oklahoma Supreme Court clearly stated that, "the relationship between parent and child must be held paramount." Id.

Turning its attention to the "best interest of the child" standard of the Oklahoma grandparent visitation statute, the court unequivocally rejected this provision. It stated:

> Herbst argues this case is ultimately about his grandchild's 'best interests'. This argument loses sight of the threshold which must be met in order to address the child's best interests in the first place. To reach the issue of a child's best interests, there must be a requisite showing of harm, or threat of harm, to bring the issue before the court . . .Absent a showing of harm, (or threat thereof) it is not for the state to

> choose which associations a family must maintain and which the family is permitted to abandon. This case does not meet the threshold test to put the child's best interests at issue.

Id. The court summarized by stating that Oklahoma's grandparent visitation statute was unconstitutional because it "falls short of a compelling state interest." Id. at 399.

In contrast to the above cases stands the ruling of the Louisiana First Circuit Court of Appeals.[1] The Louisiana First Circuit held:

> Civil Code article 136B is not substantially intrusive of the parental right of privacy in child rearing. The codal article is narrowly drawn to further visitation with the extended family, but only under set, restrictive conditions. We note that the article specifically requires a threshold finding by a court of 'extraordinary circumstances.' . . .If the court finds such circumstances the court must next determine if the visitation is in the 'best interest of the child.'

Reinhardt v. Reinhardt, 720 So.2d 78, 80 (La.App.1st Cir.1998).

Although the court makes repeated mention of "extraordinary circumstances" as the threshold requirement of

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[1] The Louisiana Supreme Court affirmed the First Circuit Court of Appeals' holding and adopted its opinion . Therefore Petitioner must rely on the decision in Reinhardt v. Reinhardt, 720 So.2d 78 (La.App. 1 Cir.1998) as a basis for her argument.

extended family visitation, no definition is provided. The only possible definition lies in the reasoning of the court that "Civil Code article 136 is found in the code section governing divorce. Thus it provides for court imposed visitation with the children of divorced parents." Id. at 80. The court further elaborates by stating that "after the fragmentation of the children's primary family through divorce, the state has a legitimate and substantial interest in encouraging beneficial extended family relationships with children. Id.

Finally, the court reasons that "the state mandates ascendant support of descendants in need. La. C.C. art. 229. In anticipation of a possible order of future support, the state and the ascendants have a legitimate and substantial interest to maintain extended family relationships through reasonable visitation." Id.

The only conclusion that may be drawn from the court's argument is that an "extraordinary circumstance" is a circumstance in which the parents are divorced and the custodial parent is disallowing grandparent and extended family visitation. Additionally, it appears that the court considers the rendering of financial assistance and support by the grandparents as ascendants to the parents and children as descendants a proper prerequisite for court mandated visitation.

Nowhere in the majority's reasoning is the issue of a showing of substantial harm addressed. The majority finds the "best interest" standard contained in article 136 (B) as a sufficient basis for making the determination of visitation. Only in the dissent by Judge Guidry are the issues of substantial harm and exactly what constitutes "extraordinary circumstances" given attention. Addressing those issues Judge Guidry stated in part:

> Other circuits in this state have looked to the language of 136(B) and found divorce, death and interdiction of one or both parents to be 'extraordinary circumstances' in which extended family relationships may serve to enlighten, guide and teach children. The extraordinary circumstances language of 136(B) nor the codal "best interest" provisions do not rise to the level of, nor specifically require a showing of substantial harm if non-parent visitation is not granted.

Id. at 81.

Petitioner urges this Honorable Court to find as did Judge Guidry that article 136(B), in lacking a requirement of substantial harm, is constitutionally deficient.

The Florida, Oklahoma, Georgia, Tennessee and Washington cases are directly analogous and persuasive to the instant case. They unequivocally represent that other jurisdictions are in conflict with Louisiana in regard to the legitimacy and constitutionality of grandparent visitation statutes. The above cited jurisdictions stand in direct conflict to the holding of the Supreme Court of Louisiana. The Louisiana courts have ruled that grandparent visitation is a compelling state interest, even absent the showing of substantial harm to the child. This ruling cannot be left to stand. This Honorable Court must grant Petitioner's Writ of Certiorari in this matter and resolve the issue of grandparent visitation for the benefit of all jurisdictions.

CONCLUSION

The right to make parental decisions is a fundamental right guaranteed by the United States and Louisiana Constitutions. As such, any infringement or limitation of this right is subject to strict scrutiny. Louisiana's grandparent visitation statute, Civil Code article 136 (B), fails to meet this standard because it lacks the requirement of a demonstration of harm to the child prior to the ordering of extended family visitation. As the rulings of jurisdictions in conflict with Louisiana have shown, this demonstration of harm is a prerequisite to a finding of a compelling state interest. Absent such, the statute is facially unconstitutional. For these reasons this Honorable Court must find Louisiana Civil Code article 136 (B) unconstitutional.

Respectfully submitted,

LEO J. PALAZZO, LA #22130
600 Loyola Avenue, Suite 300
New Orleans, Louisiana 70113
Telephone: (504) 586-1442
Attorney for Jan Marie Reinhardt, et al. --Petitioners

Date: March 18, 1999

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1998

_____

JAN MARIE REINHARDT, et al. --PETITIONERS

VS.

PEGGY MISTICH REINHARDT, et al. --RESPONDENTS

PROOF OF SERVICE

I, Leo J. Palazzo, do swear or declare that on this date, March 18, 1999, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the Untied States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Stanley P. Lemoine
Clerk of Court
First Circuit Court of Appeal
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Rebecca N. Robichaux
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Judge John L. Weimer III
17th Judicial District Court
Parish of Lafourche
P.O. Box 231
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Carlos M. Finalet, III
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P.O. Box 94005
Baton Rouge, Louisiana 70804-9005

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 16, 1999.

Leo J. Palazzo,
LA #22130

APPENDIX A

THE SUPREME COURT OF THE STATE OF LOUISIANA

PEGGY MISTICH REINHARDT, ET AL

VS.

No. 98-C-2697

JAN MARIE MANNO REINHARDT, ET AL

IN RE: Reinhardt, Jan Marie Et Al; — Defendant(s); Applying for Writ of Certiorari and/or Review; Parish of Lafourche 17th Judicial District Court Div. "A" Number 79013; to the Court of Appeal, First Circuit, Number CA97 1889

December 18, 1998

Denied.

BJJ

WFM

CDK

CDT

COLOGERO, C.J. would grant the writ.

VICTORY, J. would grant the writ.

KNOLL, J. not on panel.

Supreme Court of Louisiana
December 18, 1998

/s/ Illegible

Clerk of Court
For the Court

APPENDIX B

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT
Post Office Box 4408
Baton Rouge, Louisiana 70821-4408

Docket Number : 97/CA/1889 DATE: Sep. 25 1998

PEGGY MISTICH REINHARDT AND TYRELL WILEY REINHARDT

VERSUS

JAN MARIE MANNO REINHARDT AND DARWIN JAMES REINHARDT

TO:

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NOTICE OF JUDGMENT

You are hereby served with a copy of the opinion in the above entitled case.

Your attention is invited to Rule 2-18 (Rehearing) of the Uniform Rules of the Courts of Appeals, effective July 1, 1982.

I hereby certify that this opinion and notice of judgment were mailed to the trial judge, the clerk of the trial court, all appeal counsel of record, and all parties not represented by counsel this date.

/s/ Karen West

STANLEY P. LEMOINE, CLERK
COURT OF APPEAL, FIRST CIRCUIT

AMENDED

TIME DELAY FOR REHEARING, C.C.P. ART. 2166; C.Cr.P. ART. 922; Act No. 451, EFFECTIVE AUGUST 30, 1983.

FEE FOR REHEARING, R.S. 13:352, AS AMENDED, EFFECTIVE AUGUST 30, 1986.

A-5

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

Number 97 CA 1889

PEGGY MISTICH REINHARDT, et al

VERSUS

JAN MARIE MANNO REINHARDT, et al

Judgment Rendered: September 25, 1998

* * * * * * * * * * *

Appealed from the
Seventeenth Judicial District Court
in and for the Parish of Lafourche
State of Louisiana
Suite No. 79013 Div. "A"

Honorable John L. Weimer, Judge

* * * * * * * * * * *

Rebecca N. Robichaux Raceland, LA	Counsel for Plaintiff-Appellees - Peggy Mistich Reinhardt, Tyrrell Wiley Reinhardt, & Jan Guidry Reinhardt
Leo J. Palazzo New Orleans, LA	Counsel for Defendant - Appellant - Jan Marie Manno Reinhardt

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Bertha Hillman Thibodaux, LA	Counsel for Defendant - Chad, Chase & Chelsea Reinhardt (children)
Carlos Finalet, III Attorney General's Office Baton Rouge, LA	Counsel for Attorney General - Richard P. Ieyoub

* * * * * * * * * * *

BEFORE: FITZSIMMONS, GUIDRY, AND CHIASSON, JJ.[1]

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[1] Judge Remy Chiasson, retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

FITZSIMMONS, J.

Defendant-appellant, Jan Marie Manno Reinhardt (Ms. Manno), filed a motion to terminate visitation between her children and paternal relatives. Ms. Manno argued that the visitation was not in the best interest of the children and attacked the constitutionality of article 136B. After a hearing, the district court denied the motion to terminate and found Civil Code article 136B constitutional. The only issue on appeal is the constitutionality of article 136B. We affirm.

Article 136B provides for visitation with a relative, by blood or affinity, and step-grandparents or former stepparents. The visitation article requires "extraordinary circumstances." The trial court must then assess if it is in the "best interest" of the children. Ms. Manno argues that article 136B infringes on her fundamental parental right to raise her children, and decide whom they should see.

Statutes are presumed to be valid. If possible, the constitutionality of a statute should be upheld. The burden of proof rests with the party attacking the statute. **Soloco, Inc. v. Supree**, 97-1256 p.3 (La. 1/12/98); 707 So.2d 12, 114; **State v. Gamberella**, 633 So.2d 595, 601-02 (La. App. 1st Cir. 1993), *writ denied*, 94-0200 (La. 6/24/94; 640 So.2d 1341. The U.S. Constitution and the Louisiana Constitution recognize the fundamental liberty interest or right of personal privacy in decisions relating to marriage, child rearing, and family relationships. **Santosky v. Kramer**, 455 U.S. 745, 753, 102 S.Ct. 1388, 1394-95, 71 L.Ed.2d 599 (1982); **Zablocki v. Redhail**, 434 U.S. 374, 384-86, 98 S.Ct. 673, 680-81, 54

L.Ed.2d 618 (1978); **State v. Perry**, 610 So.2d 746, 755-56 (La. 1992); **Gamberalla**, 633 So.2d at 604. In Louisiana, the standard of strict scrutiny is applied to review state action that imposes a burden on decisions as fundamental as those included within the right of personal privacy.[2] Under the standard of strict scrutiny, the state action "may be justified only by a compelling state interest, and the state action must be narrowly confined so as to further only that compelling interest," **Perry**, 610 So.2d at 760; **Gamberella,** 633 So.2d at 604; **State, Department of Social Services v. McCorkle,** 97-13 pp. 7-8 (La. App. 5th Cir. 4/29/97); 694 So.2d 1077, 1081, *writ denied,* 97-1399 (La. 9/5/97); 700 So.2d 517.

However, the fundamental right of personal privacy is not absolute. **Gamberella,** 633 So.2d at 604. "The well-being of its children is of course a subject within the (s)tate's constitutional power to regulate. . . ." **Ginsburg v. New York,** 390 U.S. 629, 639, 88 S.Ct. 1274, 1280, 20 L.Ed.2d 195 (1968). The state regulates parental rights in many areas: for example, child custody, child visitation, child labor, schooling, and health. Additionally, when analyzing the effect of a regulation on the rights of parents to privacy in family decisions and child rearing, the interest and rights of the children and relatives should also be considered and balanced. **Gamberella,** 633 So.2d at 604; **see Sightes v. Barker,** 684 N.E. 2d 224, 228 & 232 (Ind. Ct. App.), *transfer denied,* 690 N.E. 2d 1187 (Ind. 1997); **Ridenour v. Ridenour,** 120 N.M. 352, 355-56, 901 P.2d 770, 773-74 (N.M. Ct. App.), *cert. denied,* 120 N.M. 68, 898 P.2d 120 (1995).

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[2]Because strict scrutiny is the highest level of review on this issue, it is not necessary to review the statute under the U.S. Constitution.

Civil Code article 136 is found in the code section governing divorce. Thus, it provides for court imposed visitation with the children of divorced parents. *See Lingo v. Kelsay,*. 94-1038 p.2 (La. App. 3d Cir. 3/3/95); 651 So.2d 499, 500. After the fragmentation of the children's primary family through divorce, the state has a legitimate and substantial interest in encouraging beneficial extended family relationships with children. **See Sightes v. Barker,** 684 N.E. 2d at 231; **Michael v. Hertzler,** 900 P.2d 1144, 1151 (Wyo. 1995); **Campbell v. Campbell,** 896 P.2d 635, 643 (Utah App. 1995); **Hollingsworth v. Hollingsworth,** 34 Ohio App.3d 13, 16, 516 N.E.2d 1250, 1253 (1986). In cases, like this one, where one parent is infrequently or not even involved with the children,[3] the children's relationship with one side of their extended family may be lost in the absence of grandparent or family member visitation. **See Lindsey v. House,** 29, 790 p.4 & n.2 (La. App. 2d Cir. 9/24/97); 699 So.2d 1190, 1192; **Ray v. Ray,** 94-1478 pp.2-3 (La. App. 3d Cir. 1995); 657 So.2d 171, 173. Additionally, as noted by the district court, the state mandates ascendant support of descendants in need. La. C.C. art. 229. In anticipation of a possible order of future support, the state and the ascendants have a legitimate and substantial interest to maintian extended family relationships through reasonable visitation. The sum of these facts and concerns is compelling interest by the state in stabilizing broken or single parent families through visitation with extended family members.

Civil Code article 136B is not substantially intrusive of the parental right of privacy in child rearing. The codal article is narrowly drawn to further visitation with extended

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[3] The father is in prison.

family, but only under set, restrictive conditions. We note that the article specifically requires a threshold finding by a *court* of "extraordinary circumstances." It is imperative that trial courts articulate in cogent reasons for judgment, oral or written, the exact nature of the "extraordinary circumstances." If the court finds such circumstances, the court must next determine if the visitation is in the "best interest of the child." The reverse order of review or analysis is not acceptable. Civil Code article 136B (1) - (5) provides factors for the trial court to use in the "best interest" determination. The trial court's "best interest" analysis should also be contained in the reasons for judgment.

To avoid an unconstitutional application of article 136B, the trial court must be protective of the parent's fundamental right of privacy in child rearing and cognizant of the "extraordinary circumstances" and "best interest" codal requirments. This is true in the initial hearing and any subsequent modification. The mere status of the mover for visitation as a grandparent, relative, or step-relation is not sufficient to meet the requirements of article 136B. Civil Code article 136B does not presume a beneficial extended family relationship. **See Ridenour,** 120 N.M. at 356, 901 P.2d at 774. The burden is on the mover to show "extraordinary circumstances" and that the visitation is in the children's "best interest." Neither should liberal visitation, often granted to a non-custodial or non-domiciliary parent, be automatically granted to a grandparent, relative, or a step-parent or step-grandparent. As the mandated visitation to non-parents is increased, the infringement and burden on the fundamental right of privacy in child rearing increases proportionally. In the absence of an increasingly compelling state interest, visitation that unduly burdens the parental right would be

an unconstitutional infringement.

After a strict scrutiny review, we find that Civil Code article 136B is constitutional. The state's interest is compelling. The article is narrowly drawn and rationally related to the state interest. It is not unduly intrusive on the parental right of privacy, and acts as an appropriate balance of the competing interests of the parent, the extended family, and the children. **See Sightes**, 684 N.E. 2d at 233; **Ridenour**, 120 N.M. at 356, 901 P.2d at 774; **Sketo v. Brown**, 559 So.2d 381, 382 (Fla. 1st DCA 1990); **Hollingsworth**, 34 Ohio App. 3d at 16, 516 N.E. 2d at 1253-54.

For these reasons, we affirm the trial court's ruling upholding the constitutionality of Civil Code article 136B. The costs of the appeal are assessed to appellant, Ms. Manno.

AFFIRMED.